Appellate Court upholds dismissal of case against police officer who failed to arrest drunk driver

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On December 7, 2017, Marcos Rodriguez left the New Lenox home he shared with his girlfriend and infant son (among others) and went to a friend's Park Forest house to watch Thursday Night Football. Shortly after arriving, Rodriguez started drinking whiskey and drank an entire bottle over the next nine hours. His friend told him he was not okay to drive and invited him to sleep over, but Rodriguez wanted to go home. When his host left to go to bed, Rodriguez decided to leave despite being aware that he was drunk. About five minutes after leaving (at about 5:45 a.m.), he bumped into the rear of car stopped at a red light. Neither driver was injured, and there was no significant damage to either vehicle, but the other driver called 911 and reported that she had just been rear-ended and she didn't know if the other driver was "drunk or what." The Park Forest police officer arrived, and the other driver told the officer she saw Rodriguez weaving across lanes while she was driving behind him, and she passed him to get away but got stopped at the light. Plaintiff alleged various facts established that the officer knew or should have known that Rodriguez was intoxicated. Still, he failed to perform any DUI investigation, field sobriety, or breathalyzer tests. Instead, finding no damage to either car, the officer provided both drivers with a report number and allowed them to leave. While leaving, Rodriguez drove across a double yellow line and stopped in a crosswalk.

About twenty minutes later, Rodriguez fell asleep at the wheel, drove off the road, struck a utility pole and was ejected from the car. Upon arrival at the hospital, a blood test revealed a BAC of .241, three times the legal limit. Rodriguez sued the Officer and the Village alleging negligence and willful and wanton conduct for failing to investigate, detain, or arrest him, which would have prevented his subsequent accident. Although the trial court dismissed the negligence count based upon section 4-102, it declined to dismiss the willful and wanton count, even though section 4-102 is a blanket immunity. Following discovery, Defendants moved for summary judgment, asserting that Kessler owed no duty and that even if a duty was owed, the allegations were subject to absolute immunity. Plaintiff countered that the officer was executing and enforcing the law when he responded to the first accident scene, which implicated section 2-202 of the Tort Immunity Act and its exception for willful and wanton conduct. According to Rodriguez, there was at least a question of fact whether the officer acted willfully and wantonly when he failed to investigate Rodriguez's intoxication despite indications that he was intoxicated. Several other cases involving police failures to detain drunk drivers, relying on *Doe v. Calumet City*, 161 Ill. 2d 374 (1994), held that police could be liable for willful and wanton conduct under section 2-202's exception, which prevailed over the absolute immunities of sections 4-102 and 4-107. However, *Ries v City of Chicago*, 242 Ill. 2d 205 (20011), overruled those cases and held that the willful and wanton exception of section 2-202 could not prevail over a specifically applicable immunity. Therefore, to the extent that sections 4-102 or 4-107 are the more specifically applicable immunities, they provide blanket immunity even if the defendant's actions are correctly characterized as willful and wanton. The appellate court held that the absolute immunity of section 4-102, which provides immunity for failure to provide adequate police protection or service, and section 4-107, which provides immunity for failure to make an arrest, were the more specifically applicable immunities, and section 2-202's exception for willful and wanton conduct is not an exception to other sections of the Act. Therefore, the trial court's entry of summary judgment was affirmed.